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MINORITY REPORT

OF THE

COMMITTEE ON ELECTIONS.

The undersigned, members of the Committee on Elections, to whom were referred the petition of the Hon. J. P. Johnson, "claiming the seat in the House as the representative from the third district in the State of Arkansas, and asking that he be permitted to contest the seat of the sitting member, Hon. A. H. Garland," differing from the majority of the committee, beg leave to present this minority report.

At the last session of Congress a majority of the committee recommended the adoption of the following resolutions:

1st. *Resolved*, That thirty days be allowed the contestant to amend his notice if he so desire.

2nd. That the sitting member be allowed thirty days after such amendment is made, and notice thereof, or after notice of contestants declining to amend, in which to make and serve his answer thereto on contestant, setting out in said answer the grounds on which he rests the validity of his own, and denies the election of contestant.

3rd. That after service of the answer or expiration of the time limited therefor, sixty days be allowed the parties to take evidence, which shall be confined to the allegations and denials contained in the answer and notice, and that the same be taken and transmitted to the House under the rules prescribed by the act of Congress of the United States, approved February 19th, 1851, entitled "An Act to prescribe the mode of obtaining evidence in cases of contested elections."

A minority of the committee also made a report and recommended the adoption of the following resolution: *Resolved*, That the Hon. J. P. Johnson is duly elected representative from the Third Congressional District of the State of Arkansas, and as such is entitled to the seat in this House as the representative from said third district." This resolution was rejected by a vote of —— in the affirmative, and —— in the negative.

The House thereupon adopted the resolutions reported by the majority of the committee, which in effect postponed the case for future proof to be taken under certain rules, allowing the parties the privilege of amending their pleadings, if they so decided. It will at once be perceived by an examination of the report of the committee that

they do not attempt to decide the question, which at last must control the action of the House, namely:

"Did contestant or the sitting member receive a plurality of the votes cast at said election." Indeed, the intimation is pretty clear from the whole tenor of the report, in the opinion of the committee, that contestant had been elected, but had failed to show it by the highest grade of evidence of which the case was susceptible and therefore time was granted to obtain the proof.

Immediately after this action on the part of the House, to-wit: on the 5th of April, the contestant availing himself of the privilege granted him, amended his notice, in which in precise and apt allegations he acquaints the sitting member of the grounds relied on for contesting his seat. A copy of this notice was served on defendant the same day. The sitting member failed or neglected to have a copy of his answer served on the contestant within the time prescribed by the resolution of the last session, and the notice of the contestant as originally given, and as amended, remain unanswered to this time. No excuse or apology was offered at the last session by the defendant for his failure to answer the original notice, unless it be found in his objection to its sufficiency.

The objection to this notice was overruled by the committee, and doubtless the defendant would have then been given an opportunity of answering had he asked leave to do so.

The committee, in their report at this session, state that the defendant "upon his return to Arkansas prepared his answer now before the committee, a copy of which he sent to the sheriff of Desha county, the residence of Mr. Johnson, with instructions to deliver the same to him. This was not done, and for his failure to do so the sheriff returned the paper with the following endorsement:

"Came to hand April 27th, 1862.

S. C. Clayton, *Sheriff*.

"Not executed on account of Jilson P. Johnson being absent from my county, May 27th, 1862.

S. C. Clayton, *Sheriff*."

The impression left upon the mind from reading this part of the report would be that the contestants absence from his county was the cause of the failure of the defendant to have his answer served, and yet the fact is we have the concurrent written testimony of both contestant and defendant, that the former was at home during the entire time within which the answer was to be served. See amended petition of contestant and written statement of facts of defendant.

What the committee mean in their report by saying the answer of defendant to the amended notice is "now before the committee" we are at a loss to conjecture. If it is meant to say it is or was before the committee in the legal character of a response or answer, we must be permitted to say we did not so understand the action of the committee, upon the contrary we understand it as ruled out of the case for all legal purposes, other than as tending to show an effort on the part of defendant to answer in time.

The amended notice then remains unanswered and by no fault of contestant. Indeed, the defendant has not even asked permission to file his answer *nunc protunc*, but stakes his defence entirely upon the ground that contestant has failed in his proof.

The question arises what legal effect follows from the failure to answer? The notice and answer constitute the pleadings in this case, under the Act of Congress governing. Why does the law require contestant to give the sitting member notice in writing of his intention to contest the seat? Obviously that defendant may know the ground relied on, so that when he answers he may force an issue to be tried by traversing the allegations of the notice, or may confess them and set up another in avoidance. The whole office of all pleading is to form an issue, to be tried. If the defendant fails to answer, controverting the allegations of the contestant, there is no issue to try.

The well established rule of pleading, universal in its application, is, that all material allegations must be regarded as admitted until denied. The material allegation of the notice is, that contestant received a plurality of eight votes in the District. It is not denied—must it not be taken to be true? Does not every rule of pleading known to the books, as well as every rule of logic known to the logician, require it to be regarded as established? If taken as true, what judgement shall the House, acting here as it does in a quasi judicial character, render? We insist it is compelled to decide against the right of the sitting member to the seat. This consequence must follow, unless every rule of pleading and logic is set at defiance. In deciding that the sitting member is not legally entitled to the seat, it by no means follows that the contestant is. The judgment that ousts the sitting member is one thing, the judgment that gives the seat to the contestant is essentially a different thing. Each House has the exclusive right of judging of the qualification, election, and virtues of its own members, and therefore, he who claims a seat must not rely upon the weakness of the title of some other claimant, but must show he is entitled to it by affirmative proof.

In the opinion of the undersigned, the failure to answer the original and amended notice in this case, must have the effect of depriving the sitting member of his seat, even in the absence of proof, but would not have the effect of giving the seat to the contestant.

It will be perceived by examination of the notice in this case, that the substantive charge is, that there was a mistake to the prejudice of contestant, in making out the abstract of the vote of Arkansas County by the Clerk, Justice and householder, that was forwarded to the Governor, and upon which he acted in granting the certificate of election, which, when corrected, shows he was elected by eight votes.

To support this allegation, the contestant offered in evidence, copies of the poll books from each township or voting precinct of Arkansas County, certified by the Clerk of said County under seal of office, to be correct transcripts from the originals, as they remain on file in his office. This evidence was rejected by the Committee, because in their opinion the same was improperly authenticated.

In support of their view, the House is referred to the Act of Con-

gress relating to contested elections, and the Act of March 27, 1804. We are at a loss to see the application of either to the case before the House. The Act respecting contested elections, is merely cumulative, and whilst it prescribes one mode of taking testimony in cases of contested elections, does not at all interfere with the well established rules of evidence as recognised by the common law, or by the statutes of the several States. The statute referred to, as well as the rule laid down by the House at the last session, applies only to the case where an answer has been served in time. Such is the express language of the statute and the resolution of last session. Indeed the statute does not provide for taking testimony where there is no answer, for the obvious reason that in the contemplation of the law makers, no proof in such case would be required, and such we take to have been the sense of this House from the language employed in the resolution of last session. The Act of March 27, 1804, relates exclusively to Courts, technically speaking, and provides for procuring and authenticating record evidence of one State to be used in evidence in the Courts of another or sister State. Now we respectfully submit that this House is not a Court, and especially it is not a Court of one of the States composing this Confederacy. The statutes of Arkansas provide for the introduction as evidence of office copies from the records of one Court in any other Court within the State, when certified by the Clerk under seal of his office. Why shall the evidence be digested here? Admit this evidence and the election of the contestant is demonstrated. With conclusive evidence before us, that the contestant was elected, we cannot but regard the retention of the seat by the sitting member, as a flagrant disregard of the rights of the electors composing the District, as well as the rights of the contestant. Whereupon, we recommend the following as a substitute for the resolution of the Committee:

Resolved, That Hon. Jilson P. Johnson, is duly elected Representative from the Third Congressional District of Arkansas, and as such, is entitled to his seat in this House.

JNO. W. CROCKETT,
JAMES B. DAWKINS,
G. G. VEST.

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